

Washington, DC - Congressman Maurice Hinchey (D-NY) and U.S. Senator Charles Schumer (D-NY) today urged the Federal Energy Regulatory Commission (FERC) to deny a transfer of license requested by AER, NY-Gen, LLC (AER) for the Swinging Bridge, Mongaup Falls, and Rio hydroelectric power projects located in Sullivan County. In a letter to FERC, the congressman and senator argued that the applicant's longstanding license noncompliance issues must be resolved before such a request should be approved.

"After five years of being in non-compliance with its license, AER is looking to pass the buck," said Hinchey. "We've been getting complaints for years about the company's failure to provide adequate access to the Toronto Reservoir and failure to provide for adequate water levels in the Toronto and Swinging Bridge Reservoirs. They need to resolve these issues before the Federal Energy Regulatory Commission can even consider an application for license transfer."

"AER has left their responsibility to the community unfulfilled for too long, and must make amends before FERC gives them the keys to the car," said Schumer. "AER should bring themselves into compliance with the terms of their license immediately, and they shouldn't be rewarded until they do so."

Over the past several years, Hinchey's and Schumer's offices have received many dozens of complaints and expressions of concern regarding the operations of these projects under the current owner. Many local residents and community leaders have raised strong concerns about the continued lack of public access and low water levels during the peak recreational season.

AER petitioned FERC in April, 2010 for approval to transfer licenses for the projects. Following the petition, FERC solicited public comment and later extended the public comment period following a request that it do so from Hinchey. FERC is now reviewing and considering the license transfer application. Hinchey and Schumer are requesting that the Commission deny the request. The full text of their letter to Jeff C. Wright, Director of the Office of Energy Projects for FERC, is below.

September 29, 2010

Jeff C. Wright, Director  
Office of Energy Projects  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Mr. Wright:

We write in regard to the proposed transfer of licenses by AER NY-Gen, LLC ("AER") for hydroelectric Project Nos. 10482-014, 10481-064, and 9690-106, located in Sullivan County, New York. AER petitioned FERC in April, 2010 for approval to transfer licenses for the Swinging Bridge, Mongaup Falls, and Rio Projects, following which your agency solicited public comment. We understand that this matter remains under review, and we urge the Commission to deny any transfer of these licenses until the applicant remedies its longtime noncompliance with the terms of its license and resolves ongoing conflicts with the local communities regarding insufficient recreational water levels in the Toronto and Swinging Bridge Reservoirs.

Over the past several years, our offices have received a large number of complaints regarding the operations of these Projects under the current owner, and we continue to hear serious concerns voiced by the local community regarding AER's longtime noncompliance with its license. As part of the license agreement for this hydropower system, AER is required to provide two public access points for the Toronto Reservoir. The eastern access has now been closed to the public since the fall of 2005 and has been the subject of extended litigation for at least three years, during which time it is our understanding that the applicant has repeatedly stalled and delayed in moving the case forward.

By allowing this matter to languish in the courts through repeated delays, AER has apparently been able to sufficiently satisfy FERC that the company was "taking action" to open the eastern public access. However, the repeated and long delays by AER seem to indicate that the company is not in fact working in good faith to resolve the issue and is now seeking to transfer the the unresolved license noncompliance to the new owners. We are concerned that FERC has continued to allow AER to remain noncompliant for nearly five years now with no apparent threat of sanction and no resolution in sight.

We urge the Commission to deny AER any license transfer until the longstanding public access issue is fully resolved and the applicant complies with the terms of its license. Further, we ask that as part of any transfer, FERC require the applicant to include in its license an agreement to maintain reasonable water levels in the Toronto and Swinging Bridge Reservoirs during peak recreational months. Despite its stated commitment to do so over the past two years, AER has not maintained sufficient water levels, much to the detriment of the local tourism and second home sectors of the local economy. Finally, FERC has been more than patient in bringing this applicant into compliance with the terms of its license, and we hope that you would consider further action to compel the licensee to live up to the terms of its license so that the public access is fully restored.

Thank you in advance for your consideration and response on this important matter.

Sincerely,

Maurice D. Hinchey  
Charles E. Schumer

cc: Edward Abrams  
Heather Campbell